APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1979
No. 79-700

WALTER FLEISHER CO., INC.,

Petitioner,

vs.

COUNTY OF LOS ANGELES and CITY OF LOS ANGELES,

Respondents.

On Writ of Certiorari to the Court of Appeal of the State of California, Second Appellate District

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PETITION FOR CERTIORARI FILED OCTOBER 31, 1979
CERTIORARI GRANTED APRIL 28, 1980

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RELEVANT DOCKET ENTRIES IN THE PROCEEDING BELOW (Chronological List)

	Item	Date
1.	First Amended Complaint for Recovery of Ad Valorem Property Taxes (Los Angeles Superior Court)	Filed June 13, 1977
2.	Answer to First Amended Complaint (Los Angeles Superior Court)	Filed July 15, 1977
3.	Notice of Motion for Summary Judgement, Declarations in Support of Motion, Memorandum of Points and Authorities in Support of Motion (Los Angeles Superior Court)	Filed November 14, 1977
4.	Hearing on Motion for Summary Judgement (Los Angeles Superior Court)	December 27, 1977
5.	Minute Order ruling on Motion for Summary Judgment (Los Angeles Superior Court)	Filed February 3, 1978

6.	Summary Judgment (Los Angeles Superior Court)	Filed and entered March 7, 1978
7.	Notice of Appeal	Filed April 14, 1978
8.	Opinion of the Court of Appeal of the State of California, Second Appellate District, Division Four	Filed July 25, 1979
9.	Denial of Petition for Hearing in the California Supreme Court	September 20, 1979
10.	Petition for Writ of Certiorari to the Court of Appeal, State of California, Second Appellate District	Filed October 31, 1979
11.	Petition for Writ of Certiorari granted by U. S. Supreme Court	April 28, 1970

APPENDIX

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

WALTER FLEISHER COMPANY, INC.,	) NO. C 195 366
Plaintiff,	) FIRST AMENDED COMPLAINT FOR RECOVERY OF AD VALOREM PROPERTY TAXES
vs.	
COUNTY OF LOS ANGELES; CITY OF LOS ANGELES; and DOES I through 10, Inclusive,	
Defendants.	

COMES NOW THE PLAINTIFF, AND FOR CAUSE OF ACTION AGAINST THE DEFENDANTS, AND EACH OF THEM, COMPLAINING AND ALLEGES AS FOLLOWS:

1. Plaintiff is, and at all times herein mentioned was, an organized and validly existing corporation.

2. The true names and capacities, whether individual, corporate, associate or otherwise, or

the type of political entity thereof, if any, of the defendants sued herein as DOES o through 10, inclusive, are unknown to the plaintiff, who therefore sues said defendants by such fictitious names, and plaintiff will amend this complaint to show such true names and capacities when plaintiff has ascertained the same or at the time of trial.

3. Defendant County of Los Angeles is, and was at all times herein mentioned, a subdivision of the State of California. Each city named herein as a defendant and DOES 1 through 5, are duly incorporated cities, municipal corporations, and/or political subdivisions of the State of California. The defendant County of Los Angeles collected personal property taxes on behalf of and for the use and benefit of said defendant cities named herein and/or named herein as DOES, and these defendants are named herein along with the County of Los Angeles so that judgment may be entered against all of said defendants, including said city defendants, for refund of the taxes which plaintiff seeks to recover by this suit.

4. On March 1, 1976, plaintiff was the owner of an in possession of a quantity of personal property manufactured or produced outside of the United States and brought into this State for transshipment out of this State, for sale in the ordinary course of trade or business. Such personal property was not in a manufacturing process or production.

5. Under the provisions of California Revenue and Taxation Code Section 225 et seq.,

plaintiff was entitled to an exemption on the personal property referred to in the preceding paragraph, in accordance with said provision and in accordance with Section 225. 1.

6. The assessor of Los Angeles County and the defendants herein have taken the position that Section 225 et seq. of the Revenue and Taxation Code is unconstitutional and/or does not apply to the goods in question, and have denied th this plaintiff and all other taxpayers in the County of Los Angeles any exemption based on the California Free Port Law, Section 225 et seq.

7. Plaintiff was issued each of the tax bill(s) hereafter set forth. Within six months of the filing of the complaint herein, plaintiff, under written protest, paid the whole of said tax to the tax collector of Los Angeles County.

8. The County of Los Angeles and the tax collector thereof, collected taxes on behalf of said defendant cities, and part of the taxes heretofore alleged were collected and were paid to and for the use of said defendants, who received a portion of said taxes.

9. No refund of said tax or any part thereof has been made to the plaintiff or to anyone acting on plaintiff's behalf.

10. Plaintiff filed an Application for Equalization. At the hearing on said application, the Board of Equalization refused to hear any evidence, make any findings of fact, and denied

said application on the grounds that only legal questions were presented and it had no jurisdiction. To the extent that this court finds that the Board should have made factual or legal determinations, plaintiff has been denied due process and equal protection.

11. That said Application for Equalization constituted a claim for refund pursuant to the provisions of Revenue and Taxation Code Section 5141, which claim has been denied within six months from filing this amended complaint.

12. The taxes sought to be recovered herein are on that portion of the tax extended from the assessment of the market value of inventory denied a free port exemption as herein alleged, and as more particularly set forth hereafter, or such greater amount of business inventory as plaintiff proves at trial was entitled to an exemption. The exact amount of such taxes is unknown to plaintiff at this time, and plaintiff will file an amendment to this Complaint, or advise the Court of such amount when it is determined or at the time of trial.

13. Plaintiff was issued the following tax bills. Plaintiff is entitled to an exemption and reduction of market value on each of said tax bills in accordance with Revenue and Taxation Code Section 225 et seq., in the amounts hereafter set forth, or in such greater or lesser amounts as plaintiff may prove at the time of trial, that it is entitled to under the provisions of Section 225 et seq.:

Bill No.	Location	Total	Reduction of Market Value in Inventory
5132022041	1020 E. 14th St. Los Angeles Calif.	$10,325.65	$213,468.95

WHEREFORE, plaintiffs pray for judgment against the defendants and each of them, for all taxes as herein alleged, in the amounts shown to be due at the time of trial, for interest thereon at the rate provided by law, for costs of suit herein; and for such other and further relief as the court deems proper.

BAKER, ANGEL AND EDMONDS

By: _____
GERALD T. MANPEARL
Attorneys for Plaintiffs

(Verification Omitted)

CAPTION OMITTED

ANSWER TO FIRST
AMENDED COMPLAINT

SUPERIOR COURT OF THE
STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES

Defendants, COUNTY OF LOS ANGELES and CITY OF LOS ANGELES, by way of answer, deny, admit, and allege as follows:

1. Answering Paragraphs 1, 2, 7, 8, 9, 10, and 12 of the First Amended Complaint herein, defendants do not have information or belief sufficient to enable them to answer the allegations set forth therein and on that basis deny them.

2. Answering Paragraphs 3 of the First Amended Complaint herein, defendants admit the capacities of the named defendants as described. Defendants do not have information or belief sufficient to enable them to answer the remaining allegations of said paragraph and on that basis deny them.

3. Answering Paragraph 4 of the First Amended Complaint herein, defendants admit the ownership of personal property at the time described. Defendants do not have information or belief sufficient to enable them to answer the remaining allegations of said paragraph and on that basis deny them.

4. Answering Paragraphs 5 and 11 of the First Amended Complaint herein, defendants deny the allegations set forth therein.

5. Answering Paragraph 6 of the First Amended Complaint herein, defendants admit

that plaintiff's interpretation of Revenue and Taxation Code Section 225 is unconstitutional and further admit that no importer has yet qualified under an appropriate interpretation of said section. Defendants do not have information or belief sufficient to enable them to answer the remaining allegations of said paragraph and on that basis deny them.

6. Answering Paragraph 13 of the First Amended Complaint herein, defendants deny that plaintiff is entitled to exemption under Section 225. Defendants do not have information or belief sufficient to enable them to answer the remaining allegations of said paragraph and on that basis deny them.

BY WAY OF AFFIRMATIVE DEFENSES THE DEFENDANTS ALLEGE AS FOLLOWS:

7. That plaintiff's First Amended Complaint fails to state a cause of action;

8. That plaintiff has failed to exhaust its administrative remedies;

9. That the Statute of Limitations (Revenue and Taxation Code Section 5138) has expired; and

10. That plaintiff has based its First Amended Complaint on legal theories which have not been embodied in any claim or letter of protest submitted to defendants.

WHEREFORE; defendants pray:

1. That plaintiff take nothing by its First Amended Complaint herein;

2. That defendants be awarded their costs of suit; and

3. That defendants be awarded such other and further relief as the court deems proper.

DATED: JUL 15 1977

JOHN H. LARSON, County Counsel

By _____ ss.
JAMES DEXTER CLARK
Deputy County Counsel

Attorneys for Defendants

(Declaration of Mailing Omitted)

CAPTION OMITTED

NOTICE OF MOTION FOR SUMMARY JUDGMENT (CCP Section 437c)
DECLARATIONS IN SUPPORT OF MOTION
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES

TO THE DEFENDANTS AND THEIR ATTORNEYS OF RECORD

Notice is hereby given that on November 23, 1977, at 9:00 A. M., or as soon thereafter as the matter may be heard, in the courtroom of Department 83, located at 111 North Hill Street, Los Angeles, California, the plaintiff Walter Fleisher Company, Inc., will move the above entitled court for a summary judgment in favor of said plaintiff and against all of said defendants.

Said motion for summary judgment will be made upon the grounds that there is no defense of the complaint herein, that there are no triable issues as to any material facts and that plaintiff is entitled to a judgment as a matter of law.

Said motion will be made and based upon this notice, the declarations attached hereto and filed herewith, the Memorandum of Points and Authorities served and filed herewith, all papers, pleadings and records filed herein, such additional declarations and affidavits that may be filed prior to or at the hearing hereon, such matters that the court may take judicial notice of.

and such other evidence, declarations, affidavits and points and authorities as may be presented or filed with the court prior to or at the hearing hereon.

Dated: Nov 14, 1977.

BAKER, ANCEL AND REDMOND

By: /s/
GERALD T. MANFEARL and
THOMAS C. CORCOVELOS
Attorneys for Plaintiff

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DECLARATION OF WALTER P. FLEISHER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, WALTER P. FLEISHER, hereby declare as follows:

1. Your declarant is the president of Walter Fleisher Company, Inc., and is familiar with all the facts stated herein, and if called upon as a witness could competently testify thereto.

2. Walter Fleisher Company, Inc., is a duly organized and validly existing corporation.

3. Walter Fleisher Company, Inc., is a wholesale importer and a distributor of novelties and gifts selling its products throughout the United States. Walter Fleisher Company, Inc., warehouses the goods described herein awaiting sale, and upon sale such goods are transshipped to locations throughout the United States.

4. For the 1976-77 tax year, lien date March 1, 1976, Walter Fleisher Company, Inc., filed Business Property Statements showing inventory located at one location in Los Angeles County:

A. 1020 East 14th Street, Los Angeles, California--inventory having a market value of $319,660.

5. Of the total market value of inventory listed above, 90%, to wit, $287,694, was imported by Walter Fleisher Company, Inc., from foreign countries. These imported goods will hereafter be referred to collectively as "imported inventories."

6. For the year preceding lien date March 1, 1976, (to wit, 7/1/74--6/30/75) 74.2% of Walter Fleisher Company, Inc.'s total shipments from 1020 East 14th Street, Los Angeles, were to customers located outside of the State of California. 25.8% of such shipments were to customers located inside the State of California.

7. All of the imported inventories of Walter Fleisher Company, Inc., are personal property which is manufactured or produced outside of the United States and brought into California by Walter Fleisher Company, Inc., as the original importer, none of which personal property is in a manufacturing process or production.

8. Under the provisions of Revenue and Taxation Code Sections 225 and 225.1(1), plaintiff is entitled to an exemption or reduction on the market value of its inventory of $213,468.95 (74.2% X $287,694) (All of which is herein referred to as "the inventory which is the subject of this lawsuit")

9. All of the inventory which is the subject of this lawsuit was brought into this state for transshipment out of California in the ordinary course of business, and on tax lien date March 1,

1976, was in plaintiff's warehouse awaiting such shipment.

10. In filing plaintiff's Business Property Statement for 1976 an exemption under Revenue and Taxation Code Section 225 was demanded; however, such request for exemption was denied, and plaintiff was issued the tax bill which is attached hereto as Exhibit "A." Plaintiff paid such tax bill under protest in two installments, accompanied by letters of protest dated December 6, 1976, and March 22, 1977, for each payment, copies of which letters are attached hereto as Exhibit "B."

I declare under penalty of perjury that the foregoing is true and correct.

Executed _____, 1977, at Los Angeles, California.

_____ss
WALTER P. FLEISHER

(Exhibits Omitted)

DECLARATION OF GERALD T. MANPEARL IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

I, GERALD T. MANPEARL, hereby declare as follows:

1. Your declarant is a partner of Baker, Ancel and Redmond, duly licensed California attorneys and the attorneys for the plaintiff Walter Fleisher Company, Inc., herein, and is damiliar with all of the facts stated herein, and if called upon as a witness could competently testify the thereto.

2. Attached hereto as Exhibit "A" is a copy of an Application for Equalization filed with the Los Angeles County Assessment Appeals Board by your declarant. The application was heard on March 18, 1977, at which time your declarant appeared on behalf of the applicant Walter Fleisher Company, Inc., and offered to prove the facts stated in the application, that applicant was entitled to an exemption, and entitled to a reduction in market value, pursuant to the grounds stated in the application. The Assessor's office objected to the offer of proof on the grounds that only a legal question was presented to the Board. The Board, on the grounds that only a legal question was presented, then denied the offer of proof and denied the application.

3. The Application for Equalization stated that it was to constitute a claim for refund, and denial of the application constituted a denial of the claim for refund under the provisions of Revenue and Taxation Code Section 5141.

4. Attached hereto as Exhibit "B" is a copy of a form prepared by the California Franchise Tax Board in connection with obtaining exemptions under Revenue and Taxation Code Section 225 et seq. This form is being sent to importers in connection with filing requests for exemption for the 1977 tax year, however, your declarant has been advised by the Los Angeles County Assessor's office that no exemptions under Section 225 et seq. have been granted in Los Angeles County for 1976 or for 1977, even though importers are being allowed to complete and return the form attached hereto as Exhibit "B."

5. In the event this court grants the motion for summary judgment in favor of the plaintiff, plaintiff will supply the court with the exact amount of refund and interest to which plaintiff would be entitled, based upon a reduction of the market value of plaintiff's inventory. This information can readily be computed from the tax bill and by the amount of interest pursuant to Revenue and Taxation Code Section 5151, or can be readily computed by the County Treasurer's office and submitted to the court by stipulation. This procedure has been used by your declarant and the County Counsel's office on a number of other occasions, both for summary judgment proceedings and trial, involving other lawsuits

for the refund of property taxes.

I declare under penalty of perjury that the foregoing is true and correct.

Executed _____, 1977, at Los Angeles, California.

_____ss
GERALD T. MANPEARL

(Exhibits Omitted)

I

STATEMENT OF FACTS AND BACKGROUND

On lien date March 1, 1976, plaintiff had inventory located in its warehouse in Los Angeles County, and although plaintiff claimed an exemption under California Revenue and Taxation Code Section 225 et seq., an assessment was made on the full value of plaintiff's inventory, and plaintiff was sent a property tax bill. The bill was paid, and the instant suit is for recovery of ad valorem property taxes.[1]

Plaintiff Walter Fleisher Company, Inc., is an importer of novelties and gifts and distributor of such products are sold to California customers.

Until recent years all of plaintiff's goods were exempt from local ad valorem property taxes

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1 This is a case of first impression. Plaintiff knows of no appellate court decisions regarding Section 225 et seq. Only two cases have come before the trial courts, and in both, Motions for Summary Judgment were granted for plaintiff: Zee Toys and Formosa Plastics Group (U.S.A.), Inc., v. County of Los Angeles, L.A. Superior Court No. 179 151; All American Distributing Co., Inc., v. County of Los Angeles, L.A. Superior Court No. C 182 173.

under the Import-Export Clause of the United States Constitution.[2]

In Brown v. Maryland (1827) 25 U.S. (12 Wheat) 419, 6 L. Ed. 689, the United States Supreme Court fromulated the original package deoctrine, holding in substance that goods held by the original importer in their original package were immune from taxes, and in Low v. Austin (1971) 80 U.S. (13 Wall.) 29, 20 L. Ed. 517, the Supreme Court held that such immunity applied to all state and local taxes, whether discriminatory or nondiscriminatory.

Under these cases the plaintiff and similarly situated importers had import immunity for their goods which were in their original package.

In 1972 theCalifornia Supreme Court decided Volkswagen Pacific v. City of Los Angeles (1972) 7 Cal. 3d 48. Although the case involved a city license tax, because of ambiguous languate in the decision, the County of Los Angeles and a number of other major counties, took the position that the "original package" of imported goods was a seagoing cargo van and not the shipping carton itself. Based on this interpretation, a number of counties began denying import immunity to importers that used seagoing cargo containers.

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2 Art. I, §10, Cl. 2: "No state shall, without the consent of the Congress lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its Inspection Laws."

The implementation of this policy by county assessors occurred at a time when California ports were under tremendous competitive pressure from the Pacific Northwest, including the ports of Tacoma, Seattle and Portland, and California warehousing operations were facing increasingly stiff competition from such major warehousing centers as Reno, Sparks, Las Vegas, and even as far away as Utah. Containerized goods could be easily moved and transported to these inland ports, and the facilites in these areas were growing at a rapid rate, primarily due to losses suffered by California ports and warehouses.

The imposition of property taxes on goods arriving in cargo vans added another competitive disadvantage to importers in California, especially those with natinal or out-of-state distribution facilities. In response to this problem, the California Legislature passed Revenue and Taxation Code Sections 225 et seq., commonly referred to as the California Free Port Law.[3]

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[3] "Section 225. Personal property manufactured or produced (1) outside this state and brought into this state for transshipment out of the United States, or (2) outside of the United States and brought into this state for transshipment out of this states, for sale in the ordinary course of trade or business shall be exempt from taxation. The exemption under this section shall not apply to personal property in manufacturing process or production. Such process or production shall not

(cont.)

The Free Port Law was intended to provide immunity for those importers such as the plaintiff, that intended to use California transportation and warehousing facilities for the storage of goods that were ultimately going to be shipped outside the State of California. The Legislature felt that it was necessary to provide an exemption for such importers and distributors that were ultimately

4 (cont.)
include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property.

"Section 225.1. A person claiming an exemption under Section 225 may either claim this exemption by (1) a percentage method of determining property held for transshipment on hand at a particular location by allocating a portion of the total inventory, using the percentage determined by dividing the total out of state shipments by the taxpayer from that location during the preceding year by the total of such shipments from that location during such year, or (2) an actual method as evidenced by contracts of sale on the tax lien date, and a full, true and correct inventory of all property held for transshipment together with the date of receipt of the same, the date of withdrawal of the same, the point of origin thereof, and the point of ultimate destination thereof.

"Section 225.2. Any property exempted under Section 225 which is reconsigned to a final destination in this state shall be subject to escape assessment procedures."

going to ship their goods out of California, but not for such companies that were using their facilities to sell to California customers. With this rationale in mind, the Legislature provided the exemption set forth in Section 225, and provided two alternative methods for computing the exemption, which are set forth in Section 225.1, of the Revenue and Taxation Code.

At the time Section 225 was passed, the controversy over whether containers were or were not in an "original package" under the U.S. Constitution, was still being litigated in the courts. (See, e.g., Singer v. County of Kings (1975) 46 Cal. App. 3d 852, 121 Cal. Rptr. 398; Montgomery Ward v. County of Alameda (N.D. Cal. 1975) 390 F. Supp. 177; Craig Corp. v. County of Los Angeles (1975) 51 Cal. App. 3d 909, 916) The new section, however, provided importers with an additional and independent grounds for claiming exemption from property taxes. The exemption provided is broader than the immunity under the Import-Export Clause, and allows importers, while the goods are in storage, to open the original cartons and repackage, relabel, etc. The 1976 tax year, lien date March 1, 1976, was the first opportunity for importers to claim exemption under the California Free Port Law.

On January 14, 1976, the United States Supreme Court rendered its landmark decision in Michelin Tire Corp. v. Wages, 423 U.S. 276, 96 S.Ct. 535, 46 L.Ed.2d 495, overruling Low v. Austin, which had been the law of the land for

over 105 years, holding that nondiscriminatory ad valorem property taxes did not come under the purview of the Import-Export Clause. The Court specifically left open, however, the question, in any individual case, of whether goods would be immune under the Commerce Clause of the United States Constitution, and of course, goods would continue to be exempt under local property tax laws.

It is clear that the exemption provided under Section 225 was not intended to be dependent upon Low v. Austin or the Import-Export Clause. It is an independent exemption statute whose viability continues. The court is referred to an opinion by Legislative Counsel dated 3/21/76, to Senator Milton Marks, the author of Section 225, and to a letter from the State Board of Equalization dated 2/2/76 addressed to county assessors, which documents are attached hereto for the convenience of the court respectively as Exhibits "A" and "B." In both of these opinions the conclusion is reached that after the Michelin decision assessors must still provide exemptions under Section 225 for goods that are stored in the State of California for transshipment, and that meet the necessary criteria of Section 225.

The California State Board of Equalization has prepared a document entitled "Exemption Claim for Goods Held for Transshipment," a copy of which is attached to the Manpearl declaration as Exhibit "B." This exemption claim is being provided to importers throughout California, including importers in the County of Los Angeles.

However, to date, the Los Angeles County Assessor's office has not seen fit to allow one single exemption to any importer in California for either the 1976 or the 1977 tax year. Plaintiff, along with all other importers, has been denied any claim for exemption under Section 225 or any immunity under the Commerce Clause of the United States Constitution.

II

ARGUMENTS PRESENTED

It is submitted that plaintiff is entitled to an exemption on the inventory which is the subject of this lawsuit under Section 225.1(1). Under this section an importer is entitled to claim an exemption on a percentage of his inventory based on his total out-of-state shipments from the location in question compared to the total shipments from such location. The intent of the warehousing operations for goods sold or shipped out of the State, and not to provide an exemption for an importer's California business.

III

PLAINTIFF IS ENTITLTED TO AN EXEPMTION UNDER SECTION 225 ET SEQ.

A. CALIFORNIA CONSTITUTIONAL PROVISIONS

Article XIII, Section 2 of the California Constitution provides in part:

> "The Legislature may provide for property taxation of all forms of tangible personal property, shares of capital stock, evidences of indebtedness, and any legal or equitable interest therein not exempt under any other provision of this article. The Legislature, two-thirds of the membership of each house concurring, may classify such personal property for differential taxation or for exemption." (Emphasis added)

It is common practice for the California Legislature to provide exemptions when the Legislature has, in its discretion, determined that such exemption is in the public interest. (See generally Revenue and Taxation Code Section 201 et seq.) Examples of such exemptions are: property brought into the state for exhibitions at fairs, carnivals, scientific, educational, religious, or artistic works (§213); 50% of all business inventories (§219); aircraft while being repaired

(§220); household furnishings (§224); seagoing cargo containers (§232); motion pictures (§988); wine held for aging (§992); computer programs (§995); and business records (§997).

In discussing the broad power of the Legislature to determine taxing policy, the California Supreme Court stated in Delaney v. Lowery (1944) 25 Cal. 2d 561, 568-569:

> "Generally the Legislature is supreme in the field of taxation, and the provisions on taxation in the state Constitution are a limitation on the power of the Legislature rather than a grant to it . . . .
>
> "'If there is any doubt as to the Legislature's power to act in any given case, the doubt should be resolved in favor of the Legislature's action. Such restrictions and limitations are to be construed strictly, and are not to be extended to include matters not covered by the language used.' That rule is a corollary of the strong presumption of the constitutionality of an act of the Legislature."

In Stevens v. Watson (1971) 16 Cal. App. 3d 629, 633, the Court stated:

> "The power of this state to select the subjects of taxation or to grant exemptions therefrom is very broad and a legislative determination

in this field must be sustained if there is any conceivable state of facts which would support it."

California's Free Port Legislation, Revenue and Taxation Code Sections 225 et seq., is a properly enacted legislative act, passed pursuant to and in conformity with the legislative power granted in Article XIII of the California Constitution to exempt certain classes of personal property from taxation. One purpose of such legislation is clearly to prevent the abuse of the state's taxing power by exempting properties imported into the state and stored pending shipment out of California. Such purpose is to prevent a burden upon commerce by providing an exemption which is broader than that provided by the Commerce Clause or the Import-Export Clause, and so to encourage commerce in the state, and the use of California facilities. The California Legislature's determination that such property should be exempt from California taxation, as well as the reasonable methods the Legislature devised to compute the exemption, must be sustained. (Atlantic Richfield Co. v. County of Los Angeles (1977) 68 Cal. App. 3d 105, 115).

B. STATUTES ARE TO BE PRESUMED CONSTITUTIONAL.

The genral and undisputed rule of constitutionality is set forth in a recent California Supreme Court decision:

"In considering the constitutionality of a legislative act we presume its validity, resolving all doubts in favor of the act." California Housing Finance Agency v. Elliott, 17 Cal. 3d 575, 594 (1976). Accord, Henry's Restaurants of Pomona, Inc. v. State Board of Equalization, 30 Cal. App. 3d 1009, 1016 (1973); 13 Cal. Jur. 30, Constitutional Law, Section 66, at 124 (1974).

As indicated by the above quoted authorities, Revenue and Taxation Code Sections 225 and 225.1, as validly enacted legislative acts, are entitled to a presumption of constitutional validity in the absence of a showing of clear and unquestionable conflict with the state or federal constitutions. California Housing Finance Agency v. Elliott, supra, at 594.

C. TAXING STATUTES ARE TO BE CONSTRUED IN FAVOR OF THE TAXPAYER.

"It is settled law that taxing statutes are acts 'in invitum' and that the courts will not adopt a strained construction to impose a tax which is not part of the legislative act. . . . If the legislative act expresses an intention to exempt certain property judicial construction is not appropriate to defeat the exemption." Estate of Melvin, 10 Cal. App. 3d 48, 55 (1970).

". . . . [A]s a general rule constitutional provisions and statutes granting exemption from taxation are strictly construed to the end that such concession will not be enlarged nor extended beyond the plain meaning of the language employed . . . . But the rule of strict construction does not require that the narrowest possible meaning be given to words descriptive of the exemption, for a fair and reasonable interpretation must be made of all laws with due regard for the ordinary meaning of the language employed and the object sought to be accomplished thereby." Honeywell Information Systems, Inc., v. County of Sonoma, 44 Cal. App. 3d 23, 27 (1974).

Sections 225 et seq. are presumed constitutional and valid, and doubts as to the meaning or extent of the exemption are to be resolved in favor of the taxpayer. In this case, the interpretation of the Free Port Law must comport with the California Legislature's intention to exempt from taxation those certain properties held in California awaiting shipment out of the state. Furthermore, even though exemption statutes are to be strictly construed, their interpretation must be consistent with the ordinary meaning of the language employed rather than the narrowest meaning that could be attributed to such language.

D. SECTION 225 PROVIDES AN EXEMPTION TO PROPERTY IN STORAGE AWAITING SHIP-SHIPMENT.

The purpose of the California Free Port Law is clearly to provde an exemption greater in breadth than that provided under the Import-Export Clause (as interpreted prior to Michelin) and greater in breadth than that provided under the Commerce Clause. That the section covers property which is held in storage awaiting shipment out of the state is celar from the language of the statute itself. Section 225 contains the following language:

> "The exemption under this section shall not apply to personal property in manufacturing process or production. That process or production shall not include the breaking in bulk, labeling, packaging, relabeling, or repackaging of such property."

This language can only be interpreted to mean property which is not in a continuous transportation process.

As indicated in the declarations, 90% of the inventory of plaintiff is imported from without the United States. It is stored in a warehouse, there to be sold in the ordinary course of business throughout the United States.

As set forth in the declaration in support of the motion for summary judgment, plaintiff

has computed the percentage of its goods which were shipped out of state for the year preceding the March 1, 1976, lien date, as 74.2% of its total shipments. Therefore, under the provisions of Section 225 and 225.1(1), plaintiff is entitled to an exemption on its inventory equaling 74.2% of its total imported inventory on hand March 1, 1976. Plaintiff's total imported inventory on lien date was $287,694.00, and the exemption of 74.2% therefore would amount to an exemption on inventory having a market value of $213,468.95. Plaintiff claims it is entitled to a refund based on such value, and in the event this court agrees and grants a summary judgment, as set forth in the declaration attached hereto, the tax represented by such amount and the interest thereon will be computed and supplied to this court from figures to be obtained from the tax collector's office.

IV

CONCLUSION

It is respectfully submitted that the summary judgment should be granted in favor of the plaintiff and against the defendants.

Respectfully submitted,

BAKER, ANCEL AND REDMOND

By: _____ss
GERALD T. MANPEARL and
THOMAS C. CORCOVELOS
Attorneys for Plaintiff

(Declaration of Mailing Omitted)

CAPTION OMITTED

STIPULATION OF FACTS FOR MOTION FOR SUMMARY JUDGMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES

The parties, by and through their attorneys, stipulate to the following facts, for purposes of plaintiff's Motion for Summary Judgment and for no other purposes:

The goods which are the subject of this Motion for Summary Judgment are manufactured or produced in foreign countries, shipped to the plaintiff, who is the original importer, where they are unloaded into warehouses in the custody and possession of the plaintiff, awaiting sale and delivery to plaintiff's customers who are located throughout the United States. The goods are stored for indefinite periods of time awaiting such sale and delivery.

DATED: December 22, 1977

JOHN H. LARSON, County Counsel

BY: _____ ss
JAMES DEXTER CLARK
Deputy County Counsel
Attorneys for Defendants

BAKER, ANCEL AND REDMOND

BY: _____ ss

Attorneys for Plaintiff

(Declaration of Mailing Omitted)

CAPTION OMITTED

POINTS AND AUTHORITIES IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT
DECLARATION IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

SUPERIOR COURT OF THE STATE OF CALIFORNIA, FOR THE COUNTY OF LOS ANGELES

INTRODUCTION

The plaintiff and defendants disagree as to the interpretation of §225 of the Revenue and Taxation Code which exempts certain kinds of goods from taxation. There is no dispute as to the constitutionality of the statute, although the defendants claim that one of the reasons for not choosing the plaintiff's version of the statute is that that version will result in constitutional problems. It should be noted that the dispute is not a small one. As the Declaration of James Dexter Clark points out, there are over 30 lawsuites claiming $1,000,000.00 of exempted taxes now filed and served, which represent only a part of the importers now claiming that section.

PLAINTIFF'S CONTENTIONS

1. The plaintiff has argued that Section 225 is a "Free Port" law made in response to competitive pressures, and that the section was designed to reverse the language in Volkswagen Pacific v. City of Los Angeles, 7 Cal. 3d 48, 101 Cal. Rptr. 869, 496 P. 2d 1237 (1972) (see also

Craig v. County of Los Angeles, 51 Cal. App. 3d 909, 124 Cal. Rptr. 621 (1975)). The plaintiff argues that the section was meant to give importers an even broader exemption than that provided them under Low v. Austin, 80 U. S. (13 Wall.) 29, 20 L. Ed. 517 (1871), (recently overruled by the U. S. Supreme Court in Michelin Tire Corp. v. Wages, 423 U. S. 276, 46 L. Ed. 2d 495, 96 S. Ct. 535 (1976)). The breadth of the plaintiff's interpretation can be seen by the fact that all repackaged goods would not even appear to receive the immunity under Low v. Austin, supra, while they would under plaintiff's version of Section 225. Most of the goods of plaintiff would be taxable pursuant to Craig v. County of Los Angeles, supra.

2. The plaintiff next contends that the "Free Port" interpretation is supported by various administrative documents. (Plaintiff's Motion p. 15.)

3. The plaintiff argues that the Legislature has the power to exempt, and that any doubt that that power exists should be resolved in favor of its existence. (Plaintiff's Motion pp. 19, et seq.)

4. The plaintiff also contends that the Legislature may exempt businesses generally and also may exempt business which import while not exempting businesses dealing in U. S. goods. (Plaintiff's Motion p. 18.)

5. The plaintiff next relies on the pending opinion in Atlantic Richfield Co. v. County of Los Angeles, 68 Cal. App. 3d (advance) 105 (1977) for the proposition that the Legislature's determination that some property should be exempt must be accepted by the court. (Plaintiff's Motion p. 19.)

6. The plaintiff next cites cases supporting the idea that legislative acts are presumed constitutional. (Plaintiff's Motion p. 19.)

7. The plaintiff states that there is a general rule that all taxing statutes are to be construed in favor of the taxpayer. They rely for this proposition on cases which state that an exemption should be interpreted consistently with the legislative intent despite the general rule that "statutes granting exemption from taxation are strictly construed. . . ." (Plaintiff's Motion p. 20.)

8. The plaintiff next relies on language of the statute which makes an exception in the exemption. The exception denies protection to goods destined for manufacture. The "exception to the exemption" states that repackaging, etc., does not constitute a manufacturing process. The plaintiff contends that the Legislature showed its intent to exempt goods, not otherwise immune or exempt by this language. (Plaintiff's Motion p. 20, et seq.)

9. The plaintiff may assert that the words "for sale" in Section 225 means that good brought into the jurisdiction for both transshipment and sale are exempt.

DEFENDANTS CONTENTIONS

1. Defendants contend that transshipment means "to transfer from one conveyance or line to another." (Standard College Dictionary, copyright 1968 Harcourt, Brace & World, Inc., New York) The defendants also contend that plaintiff's broad interpretation is contrary to legislative intent, as well as the plain meaning of the statute.

2. The defendants argue that exemptions are to be as narrowly construed as possible within the legislative intent.

3. The defendants further contend that plaintiff's support from the language of the statute does not consider the status of the law when the statute was enacted.

4. Defendants assert that the very administrative release upon which plaintiff relies actually take the defendants' position.

5. Defendants also contend that the California Legislature has previously enacted exemptions which go no further than the constitutional immunities already granted by U. S. Supreme Court opinion, so that this statute's not going beyond the commerce clause is not unprecedented.

6. Defendants contend that the constitutional difficulties involved in the plaintiff's broad interpretation supply abundant reasons for avoiding it.

7. Finally, defendants contend that the words "for sale" refer to the purpose for which the goods were originally manufactured and do not add to the exemption.

I

THE PLAIN MEANING

The word "transshipment" is, of course, key to Section 225. The plaintiff contends that "transshipment" includes storage, sale, sorting, distributing, and the like. There is no support for this definition in any dictionary or case researched by defendants including,

Funk & Wagnalls Standard College Dictionary, supra

Webster's New World Dictionary (1968) the World Publishing Company)
"to transfer from one ship, train, etc. to another."

Ballentine's Law Dictionary (1969) Lawyer's Cooperative-Bancroft Whitney)
"Moving cargo from one vessel to another."

Words & Phrases, Vol. 42, p. 482
"Where bill of lading allowing transshipment at certain intermediate port was stamped with clause indicating that forwarding beyond such port was to be in connection with named company,

terms 'transshipment' and 'forwarding' held interchangeable, and clauses containing such terms, not being inconsistent must be construed together.'

Note: forwarding means "To undertake under the terms of the contract with the shipper for through transportation to a point beyond the carrier's own line" (Ballentine's Law Dictionary, supra).

It should be noted that even the unabridged version of Webster's New Workd Dictionary (1971 G & C Merriam Co.) contains no other definition than that stated above.

The plaintiff has postulated some other definition. It is not clear what it wishes this court to decide, because they have not actually set forth the meaning they give to the word. They do make clear, however, that they want the word transshipment to include storage awaiting sale and delivery, the sale itself, sorting by type, and distribution.

The authorities cited thus far make it clear that the commonly accepted definition of "transshipment" is that advocated by the defendants. It is the policy of the courts to avoid giving statutory phraseology a strained or forced interpretation (Union Tool Co. v. Farmers' & M. National Bank, 192 Cal. 40, 218 P. 424 (1923)).

Thus, the plaintiff must show that the legislative intent clearly shows that the plaintiff's situation was meant to be covered (Memorial Hills Association v. Sequoia Inv. Corp., 157 Cal. App. 2d 119, 123, 320 P. 2d 567 (1958)). That is the burden placed upon the plaintiff.

II

THE LEGISLATIVE INTENT

1. The bill.

The Legislature, although not describing its purpose in the enacting law's preamble, did describe the effect it wished the statute to have on the face of the bill.

In Stats. 1975, c. 1126, the Legislature stated:

> "SEC. 4. No appropriation is made by this act, nor is any obligation created thereby under Section 2229 of the Revenue and Taxation Code, for the reimbursement of any local agency for any revenue lost by it as a result of the exemption of property from taxation by this act because the net loss of revenue to any local agency is not significant." (Emphasis added.)

It should be noted that Section 2229 requires the Legislature to reimburse local government

for the exemptions that body creates in their tax lease. That section is part of the system whereby a ceiling is placed on local tax rates.

The plaintiff's broad interpretation would put the Legislature in the position of having exempted property from the county's tax base while not providing reimbursement as it is required by statute to do. The Legislature said it did not need to provide that reimbursement because there would be little or no money loss.

The plaintiff's interpretation flies in the face of a direct statement by the Legislature that the exemption would have virtually no impact.

2. Section 2229.

One other aspect of Section 2229 is worth commenting on. That statute also requires that no exemption will be for more than five years and that no exemption will exempt more than 75% of the value of the property exempted. This statute does not comply with those restrictions. The only explanation (unless the plaintiff is urging legislative oversight) is that the de minimus character of the bill (as described by the Legislature itself) does not require compliance with Section 2229. Section 225 was not meant to be the overwhelming boon to importers which the plaintiff postulates.

3. Why pass a "de minimus" bill?

The logical question is: why could the legislature have stated that the act would have little effect and yet still enact it?

The answer rests on the distinction between an exemption (statutory) and an immunity (constitutional). The U. S. Supreme Court, and others, provide the basic immunites from state and local taxes under the U. S. Constitution. The State Legislature provides exemptions.

As the plaintiff points out in its memorandum accompanying its motion, the import-export clause immunity was in flux actually from 1959) (Youngstown Sheet & Tube Co. v. Bowers, 358 U.S. 534, 3 L.Ed. 2d 490, 79 S. Ct. 383) until 1976) (Michelin v. Wages, supra). The California Legislature has often attempted to "freeze" a statutory interpretation by enacting that interpretation into law. On at least one other occasion it did the same thing with regard to a constitutional immunity from tax.

Revenue and Taxation Code Section 30102 exempts from the cigarette tax, goods which are in bond under the control us U. S. Customs. This exemption was actually unnecessary in light of the opinion in National Distillers Co. v. City and County of San Francisco, 141 Cal.App.2d 651, 297, P. 2d 61 (1966). Section 30102 was enacted in 1959. Of course, ten years later, bond immunity from state taxes was restricted to include only goods which were not destined for U. S. markets (American Smelting Co. v. County of Contra Costa, 271 Cal.App.

2d 437, 77 Cal. Rptr. 570 (1969)). But in 1959, the section was at least apparently covered by the immunity. The result of the legislation was to hold the status quo. (Of course, without the immunity, the statute may face equal protection or commerce clause problems, but Section 30102 has neither been tested in, nor interpreted by the courts.)

In the same vein is the exempting from the Alcoholic Beverage Tax Law all liquor in continuous transit through the state (Revenue and Taxation Code Section 32051). This exemption obviously conforms with the immunity described in Minnesota v. Blasius, 290 U. S. 1, 78 L. Ed. 131, 54 S. Ct. 34 (1933) and Baron v. Illinois, 227 U. S. 501, 57 L. #d 615, 33 S. Ct. 299 (1913). Those cases hold that when goods have come to rest in the taxing jurisdiction for the purposes of their owner, they are taxable. Clearly the commerce clause immunity is as broad and possible even broader than the statute.

Immunities can fluctuate leaving the exemption "out on a limb." The exemption must, then, meet all the requirements of any state action which may deny equal protection or may regulate commerce. But if the Legislature wishes to try to hold on to the immunity in this way, and if the exemption passes constitutional muster on its own, then the exemption will serve the legislative purpose.

Section 225 is such a statute. Both the import-export and commerce clauses had been

interpreted to allow more state taxation than previously thought (see VW Pacific v. City of Los Angeles, supra, and cases cited in Complete Auto Transit v. Brady, ___ U. S. ___, 51 L. Ed. 2d 326, 97 S. Ct. 1076 (1977)).

The Legislature did not specifically say that the exemption was already "covered" by an immunity, but the plain meaning of the terms it used, and its refusal to limit the statute as required by Section 2229 provide abundant support for that conclusion.

4. The plaintiff's interpretation of the legislative intent.

The plaintiff has pointed to that portion of the bill which excepts goods bound for a manufacturing process from the exemption.

Actually, deleting goods in the process of manufacturing is an attempt to see that goods which were taxable when the statute was passed would not be exempted. Thus, the exception further supports the legislative finding that the bill would not exempt any goods which were then taxable.

From 1959, the import-export clause had been interpreted so that it would not provide an immunity for goods which were the "current operational needs" of a manufacturer (see Youngstown Sheet & Tube Co. v. Bowers, supra). So deleting goods "in" manufacture actually conforms the exemption to the then-existing import-export immunity.

Plaintiff further states that Section 225 excludes from the exception the process of labelling, repackaging, etc. It maintains that this exception shows the legislative intent to exempt goods held in the taxing jurisdiction for more than transshipment. The plaintiff's reliance on this language is misplaced.

The import-export clause had been interpreted to include as "current operational needs" all goods under the control of a manufacturer (Virtue Bros. v. County of Los Angeles, 239 Cal. App. 2d 220, 48 Cal. Rptr. 505 (1966)). Even out-of-state manufacturers would be taxable under Youngstown if the goods were stored in this state as their current operational needs.

But if the extent of that out-of-state "manufacturing" is repackaging or relabeling (i.e., not really manufacturing), the goods would not be current operational needs and the import-export immunity would still protect them (see Ralston Purina v. County of Los Angeles, 56 Cal. App. 3rd 547, 128 Cal. Rptr. 556 (1976) where the Appellate Court at p. 553 described pre-Michelin law as holding that labeling and casing are not manufacture).

Section 225 accomplishes these ends by, first, excluding the current operational needs of out-of-state manufacturers from the exemption, and, second, by restricting manufacturing to something more than repackaging, etc. Thus, goods being transshipped will not be exempt if they are current operational needs under

Youngstown and following cases.

Once again, the Legislature has manefested its intention to conform this legislation to the existing constitutional immunities.

III

THE ADMINISTRATIVE CONSTRUCTION

Plaintiff relies on administrative construction by the legislative counsel and by the State Board of Equalization to support its contention that goods sorted, stored, and sold are exempted by Section 225. The defendants believe that the interpretations cited are erroneous in that they ignore the obvious impact of Youngstown and the Legislature's attempt to not exempt goods destined for manufacture out of state, because those goods would not be exempt uner the pre-Michelin interpretation of the import-export clause.

But in this case it simply does not matter whether this court accepts the administrative interpretation or the County's. Using the administrative interpretation still leads to the taxability of these goods.

1. Legislative Counsel's opinion (Exhibit A to Plaintiff's motions).

On page 3 of that opinion the Legislative Counsel explains why that office determined that Section 225 exempts goods imported for transshipment plus repackaging.

"It is our understanding that such matters as 'breaking in bulk, labeling, packaging, relabeling or repackaging' are not normally procedures carried out by shipping companies, but are more usually tasks carried out by the owner of the property or by his agent. Thus, in our opinion, breaks in the continuity of the shipment of imports or exports covered by Section 225 for any of the specified purposes would not serve to deprive property of its exemption." (Emphasis added.)

The Legislative Counsel restricts the "breaks in the continuity of the shipment" to those covered by Section 225. That supports the County's interpretation.

But, storage, sale, back-up inventory, sorting, etc., are not among the purposes allowed.

Thus, the Legislative Counsel would exempt goods passing through the state whose shipment was interrupted for the purpose of repackaging, etc. But there is no support for the plaintiff's contention that the statute exempts goods whose shipment was interrupted for anything else.

Theoretically, even repackaging plus some other purpose would not save the goods from taxation because the other purpose is not set forth in the statute, and exemption must not be expanded beyond a reasonable reading (Atlantic R. R. Co. v. Phillips, 332 U. S. 168, 91 L. Ed. 1981, 67 S. Ct. 1587 (1947); Cypress Lawn Cemetery Assn.

v. San Francisco, 211 Cal. 387, 390, 295 P. 813 (1931); Weber v. Santa Barbara, 15 Cal. 2d 82, 88 98 P. 2d 492 (1940); Cedars of Lebanon Hospital v. Los Angeles, 35 Cal. 2d 729, 734, 221 P. 2d 31 (1950)). These cases go even further: the exemption must not be expanded beyond the narrowest reasonable reading.

The Legislative Counsel had indicated the purposes which it feels may cause a break in shipment and still provide an exemption under Section 225. There is no support for saying that there are others.

2. Board of Equalization letter.

The State Board of Equalization sent a letter to the Assessor upon which plaintiff also relies (Exhibit B of plaintiff's motion). The State Board letter says:

> "Additionally, because of . . . Section 225 . . . goods brought into this state from outside the United States for transshipment out of this state . . . for sale . . . are exempt from tax even if they are within the control of a California consignee provided that his reason for having them is for the purpose of breaking in bulk, labeling, relabeling, packaging, or repackaging the property prior to transshipment."

Once again, there is absolutely no support for including any other purpose in the exemption.

IV

THE PLAINTIFF'S INTERPRETATION AND THE STATE AND FEDERAL CONSTITUTIONS

Statutes must, if at all possible, be interpreted so as to be constitutional (Shealor v. Lodi, 23 Cal. 2d 647, 653, 145 P. 2d 574 (1944); Palermo v. Stockton Theatres, 23 Cal. 2d 53, 60, 195 P. 2d 1 (1948)).

Interestingly enough, the plaintiff's interpretation would distinguish between foreign goods and U. S. goods. (Even under the pre-Michelin law, according to plaintiff, owners of foreign goods would be favored over those owning U. S. goods, as well as over foreign goods bound for California market). The same services would be provided the plaintiff's goods as are provided others, yet the owner of foreign goods would be entitled to not pay for them, while his domestic competitior would.

There would appear to be no reason for this distinction. The warehousing and shipping industries service both Japanese and Hawaiian goods (as well as those shipped from other states, see Sea-Land Services Inc. v. County of Alameda, 12 Cal. 3d 772, 117 Cal. Rptr. 448; 529 P. 2d 56 (1974) for a description of some of this interstate sea traffic).

1. Equal protection and uniformity of taxation.

Assuming that the Legislature simply neglected to add the plaintiff's interpretation to the statute and that it intended to exempt goods whose shipments were "interrupted" for the purposes of sorting, storage, sale, back-up inventory, and the like, the statute would be a prime candidate for a declaration of unconstitutionality because it would base the existence of preferential treatment on the geographic location of its origin.

WHYY v. Glassboro, 343 U. S. 117, 21 L. Ex. 2d 242, 89 S. Ct. 286 (1968) epecifically rejects this sort of exemption on the grounds of equal protection. In Bethlehem Steel Corp. v. Department of Water and Power, 276 Cal. App. 2d 221, 30 Cal. Rptr. 300 (1969) statute favoring U. S. products over foreign ones was stricken on the same grounds. Yet the plaintiff insists that a statute be interpreted so as to give foreign goods preference over domestic ones.

The plaintiff's interpreation is also contrary to the California Constitution. Article XIII, Section 1, in providing for the taxation of property within the state requires uniform and even-handed taxation (Watchtower Bible & Tract Soc. v. Los Angeles County, 30 Cal. 2d 426, 182 P. 2d 178 (1947) cert. den. 332 U. S. 811, 92 L. Ed. 389, 68 S. Ct. 112).

2. The commerce clause.

It is undisputed that the regulation of foreign commerce is a power of the Federal Government and not the states (Bethlehem Steel Corp. v. Department of Water and Power, supra; United States v. Belmont, 201 U.S. 324, 330; 81 L.Ed. 1134, 1139; 57 S.Ct. 758 (1937); and United States v. Curtiss-Wright Export Corp., 299 U. S. 304, 315-316, 81 L. Ed. 255, 260-261, 57 S. Ct. 216 (1936)).

The plaintiff's interpretation suggests that the Legislature is using its power to tax and exempt in order to encourage foreign goods while discouraging domestic ones. In fact, such encouragement and discouragement constitute a regulation of foreign commerce. As such, it is contrary to the commerce clause which vests all power to regulate foreign commerce in the Federal Government.

The absurdity of the interpretation becomes even clearer when one remembers that one of the purposes of congressionally mandated tariffs is to protect American Industry (see Preamble to the Tariff Act of 1930; 19 U. S. C. Section 1202, et seq.). A review of this section makes it clear that the variation in duties paid is not related to local taxation but to the nature of the goods and the country from which they come. Plaintiff's interpretation of Section 225 would cancel or reduce the impact of many of the tariffs thereby directly countering the impact Congress intended.

Thus, the commerce clause, and the exclusive Federal jurisdiction over foreign commerce supply even more reasons to reject plaintiff's interpretation.

3. Administrative interpretation and constitutional provisions.

One of the primary reasons for the county's interpreting the statute in the way it does is because allowing any exemption beyond the commerce clause, even for repackaging, would create the same constitutional problems. But the administrative interpretations at least rely on specific language of the statute and do carry it beyond its terms. The administrative interpretation holds the constitutional problems to the minimum although not disposing of them altogether.

V

THE WORDS "FOR SALE" IN SECTION 225 DO NOT REFER TO THE GOODS' STATUS WHILE IN STORAGE

The plaintiff may assert that the words "for sale" eman that the goods must be for sale to qualify for the exemption. This logic is clearly unreasonable since it would call for the exemption of goods held by their owners for the purpose of sale, but not for other more transportation-related purposes as were involved in All American v. County of Los Angeles, decided earlier by this court.

The placement of the commas in Section 225 is also contrary to such an interpretation. The suggestion, if made, would more accurately be reflected by the following:

"

"Personal property, manufactured or produced. . . . for . . . ."

Instead the comma after the word property is omitted, so that all the qualifiers that follow the words "manufactured or produced" actually apply to them. The true sense of the section is that the goods must be "manufactured or produced . . . for sale" rather than further manufacture or use by their owners, thus again showing a consistent legislative intent to go no further than the commerce clause.

One other possibility exists that the words "for sale" qualify the words "transshipment out of this state" immediately before them. The placement of the commas make this a less tenable interpretation than the one suggested by these defendants. But even this interpretation would require transshipment for the purpose of sale rather than for use by the owner. The definition of the word transshipment is still not affected by this qualifier.

Thus, the suggestion that the words "for sale" must modify the words "personal property" is totally unsupported.

VI

CONCLUSION

The plaintiff's interpretation is not supported by the language of the statute, by the legislative statement of the statute's scope, by administrative interpretation, or by the Federal or State const constitutions.

Adding language by implication is not only unnecessary, it flies in the face of the general rule in this state (and throughout the country) that the plaintiff must show that they clearly fall within the exemption. (Cypress Lawn Cemetery Assn. v. San Francisco, supra; Atlantic R. R. Co. v. Phillips, supra.)

That showing has not been made.

DATED:

Respectfully submitted,

JOHN H. LARSON, County Counsel

By_____ss
JAMES DEXTER CLARK
Deputy County Counsel
Attorneys for Defendants

DECLARATION OF JAMES DEXTER CLARK

I, JAMES DEXTER CLARK, declare:

That I am the Deputy County Counsel assigned to this matter.

That I have reviewed recent legislation to determine what amounts of losses to counties are being reimbursed pursuant to Revenue and Taxation Code Sections 2201, et seq., which provide a maximum ceiling on local tax rates and extend reimbursement for the localities' loss of funds as a result of exemptions. The chapters I reviewed are attached. The show that the legislature specifically authorized amounts of reimbursements ranging from $3,750.00 to $180,000.00.

That my files reveal that well over 30 suits have been filed by importers contesting the same issue as is involved in this case. Cases are presently being served against the County on this issue at the rate of one per week. I conservatively estimate that those actions involve over $1,000,000.00 of actual taxes which the importers claim they are exempt from paying as a result of Revenue and Taxation Code Section 225. I have knowledge of the fact that many importers have not filed suit and that many more suites of the same type are expected.

The above-facts are within my own personal knowledge. If called upon to testify thereto, I could competently do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22nd day of December, 1977, at Los Angeles, California.

_____ss

JAMES DEXTER CLARK

(Exhibits Omitted)

DECLARATION OF ARTHUR LEW

I, ARTHUR LEW, declare:

That I am an Appraiser II with the County of Los Angeles and am presently assigned legal and legislative research matters. I hold a B. S. Degree in Marketing Management Ressearch which included studies in distribution methods. I also hold a Juris Doctor degree and am admitted to the California Bar.

That I have researched the are of distribution pattersns of goods, and I have found that there is a flow of traffic of substantial proportions by which goods arrive in California from other states for distribution throughout the United States or throughout various regions of the United States. Thus, there is a flow of traffic which corresponds with that described in Revenue and Taxation Code Section 225 which involves United States goods.

That I have also reveiwed the case Sea-Land Services Inc. v. County of Alameda, 12 Cal. 3d 772, and found described therein a substantial amount of sea-borne traffic from the east coast to California via the Panama Canal.

The above cacts are within my own personal knowledge. If called upon to testify thereto, I could competently do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 22 day of December, 1977, Los Angeles, California.

_____ss
ARTHUR LEW

(Declaration of Mailing Omitted)

CAPTION OMITTED

DECLARATION OF
JOSEPH W. GRANT

SUPERIOR COURT OF THE
STATE OF CALIFORNIA, FOR THE
COUNTY OF LOS ANGELES

I, JOSEPH W. GRANT, declare:

That I am a Senior Appraiser for the County of Los Angeles with seven years of practical experience in appraising property similar to that involved in this action. Ia am certified as an appraiser by the State of California.

I have, during the last seven years, appraised and supervised appraisals of many firms similar to Walter Fleischer Co., Inc. I have reviewed the information submitted by Walter Fleischer Co. All firms with the varied inventory which the plaintiff has informed us it has, sort their inventory by type. Based upon the information supplied by the plaintiff for the 1976-77 year, I believe it does sort its goods by type once unloaded from transport for storage.

I have reviewed the financial information supplied by plaintiff for the 1976-77 year. The amount of inventory in stock on the lien date and the cost of goods sold for the entire year (extrapolated fromthe first 8 months) indicate a turnover rate of 3.4 per year. In other words the average stock will be in the plaintiff's inventory for over 3-1/2 months.

The above-facts are within my own personal knowledge. If called upon to testify thereto, I could competently do so.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23rd day of December 1977 at Los Angeles, California.

_____ss

JOSEPH W. GRANT

(Declaration of Mailing Omitted)

CAPTION OMITTED

Ruling on submitted matter

SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES

WALTER FLEISHER CO., INC., v.
COUNTY OF LOS ANGELES, et al.,
No. 195366

The matter, submitted December 27, 1977, is now ruled on as follows: Counsel need no reminder that this Court rendered summary judgment for the plaintiff in All American Distributing Co v County of Los Angeles, # C182 173, in which the facts are somewhat similar although not identical to those in the present case. The principal distinction is the shipment out of California of all of All-American's California-stored goods, while in Fleisher only 74.2% of its shipments were out of state. Thus, pursuant to secs. 225 and 225.1(1) Rev. & Tax Code, Fleisher seeks an exemption of 74.2% of its $213,468.95 inventory.

Despite the fact that "foolish consistency is the hobgoblin of small minds,"* this Court is still of th of the view that All-American was decided correctly and that there is no essential distinction in Fleisher which requires a different result.

Summary judgment is rendered for plaintiff; its counsel shall prepare and serve an appropriate judgment.

*possibly anonymous; at least unacknowledged.

A copy of this minute order is sent to counsel this date.

CAPTION OMITTED

NO. C 195 366

SUMMARY JUDGMENT

SUPERIOR COURT OF THE
STATE OF CALIFORNIA FOR THE
COUNTY OF LOS ANGELES

WALTER FLEISHER CO., INC., v.
COUNTY OF LOS ANGELES, et al.,
No. 195366

This cause having come on regularly for hearing in Department 85 of the above entitled court, the Honorable George M. Dell, Judge Presiding, on December 27, 1977, pursuant to duly noticed Motion for Summary Judgment filed by the plaintiff; Gerald T. Manpearl and Thomas C. Corcovelos for Baker, Ancel and Redmond, appearing for plaintiff Walter Fleisher Co., Inc.; and James Dexter Clark, Deputy County Counsel, for the defendants County of Los Angeles and City of Los Angeles; and the Court having considered the pleadings, the documents presented and filed with respect to the motions, and having heard and considered the contentions of counsel; and the Court having heretofore granted the said motion of plaintiff on the statutory ground that there is no defense to the action, and that no triable issue of fact is presented:

IT IS ORDERED that the Answer of the defendants County of Los Angeles and City of Los Angeles be and it is stricken.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Walter Fleisher Co., Inc., have judgment against the defendants County of Los Angeles and City of Los Angeles in the sum of $3,595.99 as principal, and $265.41 as interest, for a total of $3,861.40.

TI IS FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff Walter Fleisher Co., Inc. have judgment against the defendants County of Los Angeles and City of Los Angeles for costs in the sum of $_____.

Dated this 7th day of March, 1978.

GEORGE M. DELL
Judge of the Los Angeles
Superior Court

(Declaration of Mailing Omitted)